

National Advisory Committee  
to the U.S. Representative to the  
Commission for Environmental Cooperation

September 19, 2000

The Honorable Carol M. Browner  
Administrator, U.S. Environmental Protection Agency  
401 M Street S.W.  
Washington, D.C. 20460

Dear Administrator Browner:

The National Advisory Committee to the U.S. Representative to the CEC held its fifteenth meeting on September 7 and 8, 2000, in San Diego, California.

We finalized Advice No. 2000-5 on trade and environment issues, which was drafted in August by a NAC working group and circulated for comment before the meeting.

We spent most of our time on the proposed CEC program plan and budget. Our discussions resulted in Advice No. 2000-6, which responds to specific questions raised by EPA about the proposed program and addresses other areas that we feel also deserve consideration.

We also discussed how to improve the NAC's ability to provide useful advice to the EPA. While our conclusions primarily concern our own responsibilities as NAC members, we also have some suggestions for EPA. For example, we continue to believe that our work is more effective and useful if we are able to hear from representatives of the CEC Secretariat in person, rather than via the telephone. We understand that EPA has concerns that "there are times when the Secretariat's presence at a NAC meeting complicates [EPA's] ability to secure [the NAC's] advice," and we will work with EPA and the Secretariat to avoid such complications. We believe that there should be ways of addressing EPA's concerns without losing the benefit of Secretariat participation at our meetings. We have included other conclusions about our methods of work in Advice No. 2000-7.

We also discussed the June Council session. As many of us personally told you and the other members of the U.S. delegation to the Council meeting, we were very pleased at the result of the Council session, particularly with respect to the most important and contentious item on the agenda, the 14/15 submissions procedure. Although we have no doubt that 14/15 will continue to be a controversial area, we believe that the Council's decision to give the JPAC the key role contemplated by Council Res. 00-09 avoided a crisis and will work to avoid similar crises in the future.

We want to underline our appreciation to you for the critical role you personally played in the resolution of the 14/15 issue at the Council session. Those of us who attended were

impressed by your mastery of the details of the 14/15 debate, your commitment to a resolution that ensured a strong, open procedure, and your willingness to take the time to listen to our views and explain your position to us.

We also appreciate the time EPA took to help to arrange our lunch meeting with representatives of the Canadian and Mexican NACs. We found that the meeting greatly helped us to understand how those NACs operate and the challenges they face, and we hope to continue such meetings at appropriate times in the future.

Those of us who have attended several Council sessions believe that this was the most open Council meeting yet and that it and the JPAC meetings provided the most opportunity for meaningful public participation. However, we also believe that there is still a great deal of room for improvement in this area. In particular, we believe that future sessions should be planned farther in advance to allow more time for news of the session to be disseminated and that future sessions should serve as better showplaces for the CEC's success stories.

Finally, I would like to express our gratitude to the EPA officials who worked with us at our meeting in San Diego. I would also like to thank, on behalf of the NAC, Denise Moreno Ducheny of the GAC for organizing the fascinating site visits that many of us took on September 6, the day before our meeting. We strongly urge EPA to schedule meetings of the NAC/GAC in major border areas where environmental issues are evident and subject to first-hand experience by the members of your advisory committees. The choice of San Diego brought an instructive and illuminating dimension to our deliberations.

Very truly yours,

John H. Knox  
Chair, National Advisory Committee

#### Attachments

cc: Bill Nitze, Assistant Administrator for International Activities  
John Audley, Environment and Trade Coordinator  
Clarence Hardy, Director, Office of Cooperative Environmental Management  
Robert Varney, Chair, U.S. Governmental Advisory Committee  
Regina Barba, Chair, Joint Public Advisory Committee  
Bill Andrews, Chair, Canadian National Advisory Committee  
Mateo Castillo Ceja, Chair, Mexican National Advisory Committee  
U.S. NAC Members

National Advisory Committee  
to the U.S. Representative to the  
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NAC Advice No. 2000-5

**CEC Environment, Trade and Economy Program**

In its earlier communications regarding the CEC activities on Environment, Trade and Economy (NAC Advice Nos. 99-4, 99-5), the NAC has strongly supported the program area as a high priority for the CEC and an issue central to its mandate. We continue to support the Environment, Trade and Economy program as a vital link between the NAAEC and the NAFTA.

In this advice on the CEC trade and environment program, the NAC will address three specific areas: 1) NAFTA Effects; 2) Green Goods and Services; and 3) Cooperation between the CEC and NAFTA Free Trade Commission under NAAEC Article 10(6).

**1. The NAFTA Effects Project:**

The *North American Symposium on Understanding the Linkages between Trade and Environment*, scheduled for October 11-12, 2000 in Washington D.C., will be an important opportunity to highlight the leading work of the CEC in the area of assessment of the impacts of trade agreements on the environment. **The symposium should be given a high public profile to ensure the widest possible dissemination of its findings and conclusions.**

Regarding the future direction of the project, **the CEC should build upon the accomplishments of the NAFTA Effects framework and case studies to address relevant environmental and trade policy considerations.** We believe that the important work done to date has helped and can continue to help identify both positive and negative impacts on the environment from NAFTA's implementation. The CEC should use these findings to assess environmental and trade policies to support the positive impacts and mitigate the negative. Moreover, we believe that it would be a mistake to terminate this program just as its important analytic component bears fruit; rather the CEC should explore ways to integrate the lessons learned in the project into the policy-making process. **We recommend that the CEC consider the possibility of holding future symposia, but we will wait to make specific recommendations on that matter until after we have had an opportunity to evaluate the October 2000 symposium.**

Further, while we believe that the CEC project on Critical and Emerging Environmental Trends in North America can add value to the three Parties, **its scope and focus do not address the underlying issues raised in the NAFTA Effects program, and should not replace the continued assessment of NAFTA as outlined above.**

## 2. Green Goods and Services:

The CEC work on Shade Grown Coffee has provided an excellent example of the win-win relationships that are possible in trade and environment. However, the project was selected in a somewhat ad hoc fashion and without a clear sense of how or when it should conclude. As a number of other products and services are being examined by the CEC under this program, including tourism, wildlife, and electricity, **the CEC should clearly define the scope and objective in each case, including the appropriate conclusion of CEC involvement.**

Additionally, the NAC is generally wary of the product-by-product approach employed by the CEC to date in the Green Goods and Services project. The selection process does not appear to be systematic, there are obvious limits on the extent of CEC involvement in marketing goods and services, and the value-added to all the Parties is unclear. **We recommend reorientation of the program toward issues that are relevant to multiple product categories and utilize the CEC's strength in facilitating tri-national cooperation.**

## 3. CEC Cooperation with the NAFTA Free Trade Commission:

The NAC continues its strong support of cooperation between the CEC and the FTC under NAAEC Article 10(6). The CEC efforts to identify national conditions on the use of precaution in environmental regulations and an inventory of environmental labeling schemes have helped to provide a common understanding of these two issues among the parties. As the discussion moves forward, **the NAC would support the development of a common CEC/FTC position on the use of precaution and its role in both environmental and trade policies.**

National Advisory Committee  
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**NAC Advice No. 2000-6**

**The 2001-2003 Proposed Program Plan and Budget for the CEC**

This letter provides advice on the proposed program plan and budget for the CEC. It responds to questions raised to the NAC by the EPA, as well as addressing three areas (PRTR, comparative environmental standards, and enforcement/compliance reporting) not covered by the EPA questions.

The letter will respond to the nine EPA questions first, then address the three other areas. Each of the questions is reproduced in italics before our answer to it.

**1. Future of the Green Goods and Services Project (Program Area 1).** *The role of the CEC needs to be defined in such a way that it does not conflict with the current U.S. government position on labels and certification. The Secretariat has proposed work on one new product and continuing with shade coffee, the Chamaedorea Palm and sustainable tourism. We need to discuss how to focus on other products and how to move from a product-by-product process to a more comprehensive project.*

For our views on this area, please see our Advice No. 2000-5.

**2. Future of the Assessment Tools Project (Program Area 1).** *The Symposium is the culmination of several years of working on assessing environmental effects of NAFTA. Currently the only follow up proposed is by the Secretariat in the form of another Symposium in 2002. What other work should the CEC do in this area?*

For our views on this area, please see our Advice No. 2000-5.

**3. Ecoregions (Program Area 2).** *The Secretariat is proposing to move the Biodiversity work to ecoregions, probably starting with the Pacific Coast ecoregion (Bering to Baja). The Fish and Wildlife Service has been very critical of the ecoregions approach, in their view, “. . . the ecoregional approach requires directing scarce financial resources to developing a patchwork of isolated ‘model’ binational projects that are not clearly focused or defined.” As we start a consultation with other agencies, we would appreciate some advice on how to give focus to the Biodiversity Program.*

A tri-national ecoregional approach has the potential to ground the CEC's biodiversity program and bring it into focus, and it does not have to be at the expense of work done on individual species. While most ecosystems do not encompass the territories of all three nations, a program could be established that monitors species that migrate from country to country,

ecoregion to ecoregion. These species could be identified, prioritized and monitored as indicator species, allowing for better communication between ecoregions and establishing a valuable database that could be used to track the health of ecoregions and individual species.

One example of this kind of network is the Neo-Tropical Migratory Bird Program, a public-private effort that monitors North American songbirds, which have been in decline. Partners in Flight is another example, based on a similar public-private collaborative effort. CEC's Species of Common Concern program appears to be moving in this direction. The potential for matching funds to support this approach is high, given the interest in migratory species. And with the limited funds available, we advise the CEC to thoroughly research this approach.

**4. Agenda for Children's Health and the Environment (Program Area 3).** *The U.S. has been working with Mexico and Canada to develop a Children's Health and the Environment agenda and to design pilot projects that could help improve the children's health of particular sub-populations (e.g. migratory farm workers). JPAC would like to have a meeting of the Health and Environment ministers within the next two years. The U.S. initial response is that we will not have a substantial agenda to be endorsed or approved by the Health and Environment ministers. What is your opinion?*

We believe that it is premature for us to take a position on whether the CEC should host a meeting of health and environment ministers until we have seen how the programs initiated by Council Resolution 00-10 develop in practice.

**5. Trade and Transportation Corridors Project (Program Area 3).** *We have heard from the Secretariat, other federal agencies, and the public how important this project is. However, given the limited budget (about CA\$100,000) we would like to have some advice on what type of activities should be undertaken by the Secretariat.*

We generally support the proposal in the draft 2001 program plan Project 3.1.3 to have a public presentation of a report on transportation corridors at a CEC-sponsored workshop, and we look forward to the conclusions that the report and workshop reach on whether and how the CEC can add something useful to the other areas in which work on transportation corridors is being undertaken.

**6. Future of the EMS (Program Area 4).** *We would like to hear your recommendations on how to implement the Environmental Management Systems document.*

We support the efforts of the CEC to encourage the use of Environmental Management Systems (EMS) by organizations to help improve the internal management of their environmental impacts, both regulated and unregulated. Regarding future implementation of the EWG EMS Guide, we make two recommendations: First, the Parties should incorporate the relevant aspects of the Guide into their respective national programs related to compliance improvement, such as the recently launched EPA *Performance Track*, rather than seeking to pilot test the Guide in a stand-alone project. Second, the CEC should link the EWG Guide to the CEC program areas on capacity building, which has worked to increase the use of EMS in small and medium-sized

companies, thereby integrating compliance issues into the broader subject of environmental management.

**7. Support/funding of NAFEC.** *After a lengthy discussion and considering the budget constraints of the Secretariat, the Council decided to continue the NAFEC at a US \$500,000 level. How could the CEC increase the NAFEC funding, knowing that the Parties will not be able to increase their individual contributions to the CEC?*

Given decreased funding available to the NAFEC, we recommend that the Call for Proposals focus on one or two issue areas tied to other major initiatives of the CEC. This should reduce the amount of administrative time necessary to process and review a wide array of applications. In addition, it will bring increased value-added to other major CEC initiatives. Efforts should be made to continue to seek outside sources of funding to support the NAFEC.

**8. Support/funding of JPAC.** *JPAC has provided the Secretariat with a budget for the implementation of Council Resolution 00-09. Since the U.S. NAC and GAC have more experience running public consultations, could you review the proposed budget and make any appropriate suggestions?*

We strongly support the role given the JPAC in the 14/15 procedure by Resolution 00-09. To play that role successfully, the JPAC must be given adequate financial support. We do not believe that we have more experience running public consultations than does the JPAC, however, and we are not inclined to second-guess their estimates.

**9. Future Discussions by Environment and Trade Officials 10(6) Working Group.** *The current topics on the Environment and Trade officials' agenda are precaution and eco-labeling. What other topics should be discussed by the Environment and Trade officials 10(6) working group?*

We address the 10(6) area in our Advice No. 2000-5, but we also have the following concerns and recommendations about the 10(6) working group.

First, we are troubled that their meetings have not continued to include opportunities for public participation. In our February 2000 advice letter, we praised the format of the meetings on trade-and-environment issues held under CEC auspices in December 1999. In particular, we supported the two-track system devised by the CEC, according to which a meeting of experts and high-level trade and environment officials from the NAAEC parties is followed by a meeting of high-level government officials. Since then, however, we are unaware of any 10(6) working group meetings that have allowed public participation of this kind, or indeed any kind. Those of us who have tried to follow the progress of the working group have been unable to do so. **We strongly urge the EPA to ensure that the 10(6) working group allows the opportunity for significant public participation.**

Second, we are concerned that the working group is ignoring trade-and-investment issues. We have been warning EPA for two years that the increasing number of Chapter 11 investor-state

disputes that have environmental aspects may significantly contribute to public concerns about NAFTA's effect on the environment. The recent decision in the *Metalclad* case may increase these concerns. We therefore again urge the EPA to have the 10(6) working group address issues pertaining to investment. (The attention should not necessarily be limited to NAFTA Chapter 11 disputes, but it should include such disputes.) In particular, **we strongly reiterate our advice from September 1999 (in Advice No. 99-5) that the parties should move expeditiously to develop ways to keep the public informed about Chapter 11 disputes that involve environmental concerns. At a minimum, copies of the parties' filings and the arbitral panels' decisions in Chapter 11 disputes should be publicly available.**

#### **10. Pollutant Release and Transfer Register (Program Area 3).**

The EPA should encourage the CEC to assist the Mexican Government in implementing a PRTR program that complies with the guidelines set forth in Council Resolution 00-07. The implementation of a PRTR program is an extremely important aspect of the NAAEC and will provide a broad base of stakeholders in Mexico with information on toxic releases and transfers.

#### **11. Comparative Report on Environmental Standards (Program Area 4).**

We support the proposal to prepare a report on existing environmental standards in the three North American countries (project 4.1.1). The goal should be not to dictate standards to the three countries, but rather to provide a reliable basis for exchanging information among the three countries about approaches to issues of common concern.

#### **12. Enforcement/Compliance Reporting (Program Area 4).**

We strongly support continuing reports on enforcement and compliance (project 4.2.3), and believe that such reports are required by Article 12(2)(c) of the NAAEC. In particular, we believe that the parties should continue to prepare in-depth reports on a biennial basis on their enforcement and compliance activities, and that the CEC Secretariat should publish reports in the alternative years on particular topics of interest in the area of environmental enforcement and compliance. We support the proposal to prepare a report for 2001 on trends in the growth of environmental requirements compared to the level of resources available.



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**NAC Advice No. 2000-7**

**NAC Methods of Work**

To stay more knowledgeable about CEC issues between our meetings and to make our deliberations more useful to EPA, we have reached the following conclusions and suggestions about our method of work. These are subject to change, of course.

1. NAC members will be responsible for following specific CEC areas and for informing other members about significant developments and issues in those areas, as follows:

- Program Area 1 (Environment, Economy and Trade): Werner Braun, Adam Greene, and Robin Rosenberg. (Other members particularly interested in these issues include Andrea Abel, Jeff Dunoff, and Pat Williams.)
- Program Area 2 (Biodiversity): Andrea Abel and Cathy Wessels.
- Program Area 3 (Pollutants): Andy Mangan and Wilma Subra. (Another member particularly interested in this area is Adam Greene.)
- Program Area 4 (Law and Policy): John Knox and Pat Williams. (Other members particularly interested in this area include Andrea Abel and Adam Greene.)
- Article 14/15 Submissions Procedure and Chapter 11 Investor-State Disputes. Jeff Dunoff. (Other members particularly interested in these areas include Andrea Abel, John Knox, and Robin Rosenberg.)
- Public Participation, including the Council Session: Rob Kelter and Teresa Leal.

2. Between NAC meetings, EPA will send information about significant CEC meetings and CEC documents to all NAC members.

3. Where possible, NAC members will be added to CEC electronic distribution lists and/or attend CEC meetings that consider important issues within the members' area of responsibility.

4. Before each NAC meeting, a preparatory committee composed of two NAC members and the chair will work with EPA to:

- prepare an agenda for the meeting, based both on requests for advice received from EPA and on information from NAC members about issues arising in their areas of responsibility;
- review proposed speakers to ensure that they are relevant to the agenda; and
- prepare a calendar of upcoming CEC meetings and deadlines.